

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RYAN PERRY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CABLE NEWS NETWORK, INC., a
Delaware corporation, and CNN
INTERACTIVE GROUP, INC., a
Delaware corporation,

Defendants.

Case No. 1:14-cv-02926-SCJ

JOINT REQUEST TO REASSIGN RELATED CASE

Plaintiff Ryan Perry, individually and on behalf of a class of similarly situated individuals (“Plaintiff”), and Defendants Cable News Network, Inc., and CNN Interactive Group, Inc. (“CNN” and, with Plaintiff, the “Parties”) notify the Court that this recently transferred action is related to the action *Ellis v. The Cartoon Network Inc.*, No. 1:14-cv-00484 TWT (“*Ellis*”), already pending in this district. Accordingly, the Parties jointly request that this action be re-assigned to the Honorable Thomas W. Thrash who is presiding over the *Ellis* action. In support of their request, the Parties state as follows:

The Original Complaints

On February 18, 2014, Plaintiff Perry filed his original complaint in this action in the United States District Court for the Northern District of Illinois. *See* Complaint, ECF No. 1. The complaint alleged that Turner Broadcasting System, Inc. (“TBS, Inc.”) subsidiary CNN violated the Video Privacy Protection Act (“VPPA”) because its mobile software application (“App”) allegedly disclosed personally identifiable information (“PII”) to third party Bango PLC (“Bango”). *Id.* ¶¶ 44-5. The PII allegedly disclosed to Bango in this action is the title of the video clip viewed on the App along with the unique device identifier of the mobile device used to view the clip. *Id.* ¶ 44. According to the complaint, Bango is a UK-based data analytics company specializing in “tracking individual user behavior across the Internet and mobile applications.” *Id.* ¶ 14, n. 2. And, according to the complaint, Bango uses the device identifiers allegedly transmitted by the App as part of digital dossiers cataloguing users’ activities across the Internet. *Id.* ¶¶ 19-21.

On February 17, 2014 (the day before Perry filed his original complaint in Illinois), plaintiff Ellis filed his original complaint in this district. *See Ellis* ECF No. 1. *Ellis* was assigned to Judge Thrash. Like in the instant action, the complaint in *Ellis* alleged that a TBS, Inc. subsidiary (Cartoon Network) violated the VPPA

because its App allegedly disclosed PII to Bango. *Id.* ¶¶ 41-2. Like in the instant action, the PII allegedly disclosed to Bango in *Ellis* was the title of the video clip viewed on the App along with the unique device identifier of the mobile device used to view the clip. *Id.* ¶ 41. Like in the instant action, the complaint in *Ellis* alleged Bango uses the device identifiers allegedly transmitted by the App as part of digital dossiers cataloguing users' activities across the Internet. *Id.* ¶¶ 17-19.

The two cases present the same relevant factual allegations: Apps of TBS, Inc.'s subsidiaries allegedly send the same type of information (device identifier and titles of videos viewed) to the same third party (Bango), and Bango then allegedly does the same thing with that information. Plaintiffs Perry and Ellis each claim that this factual chain of events violates the VPPA. Additionally, Plaintiffs Perry and Ellis are represented by the same law firm, Edelson PC, in both cases. Likewise, sister companies CNN and Cartoon Network are represented by the same law firms in both cases, ZwillGen PLLC and Troutman Sanders LLP.

Relevant Subsequent Procedural History

On April 25, 2014 Cartoon Network moved to dismiss the complaint filed against it in *Ellis*. *See Ellis*, Dkt. No. 20. On May 16, 2014, Plaintiff Ellis filed an amended complaint. *See Ellis*, Dkt. No. 23. On June 6, 2014, Cartoon Network moved to dismiss the amended *Ellis* complaint for failure to state a claim on which

relief can be granted and for lack of standing. *See Ellis*, Dkt. No. 26. Cartoon Network's motion to dismiss has been fully briefed and was marked as submitted to Judge Thrash on July 23, 2014.

Also on April 25, 2014, CNN moved pursuant to 28 U.S.C. § 1404(a) to transfer the instant *Perry* action from Illinois to the Georgia court presiding over *Ellis*, or in the alternative to dismiss the complaint. *See* Dkt. No. 18 (Motion to Transfer or in the Alternative Dismiss). CNN's bases for dismissal were the same as the bases in *Ellis*—failure to state a claim on which relief can be granted and lack of standing. *Id.* at 9-14. With respect to transfer, CNN argued that the interests of justice favored transfer to the Northern District of Georgia where *Ellis* was pending because it would conserve judicial resources and avoid the risk of inconsistent judgments. *Id.* at 7-8. CNN also argued that because Cartoon Network and CNN were subsidiaries of the same parent company and both headquartered in Atlanta, Georgia, the Georgia district court was more convenient for witnesses and the primary location of relevant documents and other sources of proof. *Id.* at 6-7.

The Illinois district court decided to construe CNN's motion to transfer or in the alternative to dismiss solely as a motion to transfer and defer ruling on the motion to dismiss. *See* Dkt. No. 22. On August 25, 2014, the court granted CNN's motion to transfer the instant action to this District. In doing so, Judge Gettleman

of the Illinois district court observed that “the complaint in the [Ellis] case contains many of the same allegations in [it] as the complaint in the instant case, including the involvement of Bango with the Cartoon Network app.” *Perry v. Cable News Network, Inc.*, 14 C 1194, 2014 WL 4214873, *4 (N.D. Ill. Aug. 25, 2014). He also pointed out that “[i]f transfer did not occur, two courts would spend limited resources educating themselves about similar technologies.” *Id.* On September 12, 2014, the case file for this action was formally transferred to the Northern District of Georgia and the action was assigned to the Honorable Steve C. Jones. *See* Dkt. No. 35.

Requested Relief

The Parties now notify the Court that this action is related to *Ellis* and jointly request that the action be re-assigned to Judge Thrash as contemplated by Judge Gettleman’s transfer opinion. The parties respectfully submit that this action presents the same issues of fact for resolution as the *Ellis* matter. The Parties also believe that the interests of justice identified by Judge Gettleman in his opinion will be better served if the two matters are heard by the same judge.

Dated: September 29, 2014

By: s/ J. Dominick Larry
Jay Edelson
jedelson@edelson.com
Rafey S. Balabanian
rbalabanian@edelson.com
Benjamin H. Richman

brichman@edelson.com

J. Dominick Larry

nlarry@edelson.com

Courtney C. Booth

cbooth@edelson.com

EDELSON PC

350 North LaSalle Street, Suite 1300

Chicago, Illinois 60654

Tel: 312.589.6370

Fax: 312.589.6378

Counsel for Plaintiff

Dated: September 29, 2014

By: s/ James A. Lamberth
James A. Lamberth
Georgia Bar No. 431851
james.lamberth@troutmansanders.com
Alan W. Bakowski
Georgia Bar No. 373002
alan.bakowski@troutmansanders.com
TROUTMAN SANDERS LLP
600 Peach Tree Street, N.E.
Suite 5200
Atlanta, Georgia 30308
(404) 885-3000 (telephone)
(404) 962-3900 (facsimile)

Marc Zwillinger (*pro hac vice*)

marc@zwillgen.com

ZWILLGEN PLLC

1900 M. Street NW, Suite 250

Washington, DC 20036

(202) 706-5205 (telephone)

(202) 706-5298 (facsimile)

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2014, I electronically filed the foregoing JOINT REQUEST TO REASSIGN RELATED CASE with the Clerk of Court using the CM/ECF system, which will automatically send a notice of electronic filing to the following counsel of record:

Jay Edelson
Rafey S. Balabanian
Benjamin H. Richman
James Dominick Larry
Courtney C. Booth
EDELSON PC
350 North LaSalle Street
Suite 1300
Chicago, Illinois 60654

Dated: September 29, 2014

s/ James A. Lamberth
James A. Lamberth
Georgia Bar No. 431851